

MINUTES OF MEETING
ALAMEDA COUNTY PLANNING COMMISSION
JANUARY 22, 2008
(Approved February 19, 2008)

FIELD TRIP:

MEMBERS PRESENT: Commissioners Mike Jacob; Glen Kirby, Chair; Kathie Ready and Richard Rhodes.

MEMBERS EXCUSED: Commissioners Ken Carbone, Vice Chair; Frank Imhof; Alane Loisel.

OTHERS PRESENT: Jana Beatty, Senior Planner

The Commission convened at 224 W. Winton Avenue, Room 111, Hayward, California, at the hour of 1:30 p.m. and adjourned to the field to visit the following properties:

1. **ALTAMONT MOTORSPORTS PARK** ~ Revocation hearing for C-5720 pursuant to Section 17.54.030 of the Zoning Ordinance, Altamont Motorsports Park, located at 17001 Midway Road, east side, approximately 2,200 feet south of Highway I-580, unincorporated Midway area, Assessor's Parcel Number: 099B-7675-005-07. **Staff Planner: Jana Beatty**

2. **TENTATIVE TRACT MAP, TR-7928 – GOMEZ and JIMENEZ** ~ Petition to allow conversion of seven apartments into seven residential condominiums, in a R-S-D-35 (Suburban Residence, 5,000 square feet Minimum Building Site Area/3,500 square foot Building Site Area per Dwelling Unit) District, located at 235-259 Grove Way, southeast side, approximately 350 feet southwest of Haviland Avenue, Cherryland area of unincorporated Alameda County, bearing Assessor's Parcel Number: 429-0028-052-00. **Staff Planner: Howard Lee**

REGULAR MEETING: 6:00 p.m.

MEMBERS PRESENT: Commissioners Ken Carbone, Vice-Chair; Frank Imhof; Mike Jacob; Glenn Kirby, Chair; Alane Loisel, Kathie Ready and Richard Rhodes.

MEMBERS EXCUSED:

OTHERS PRESENT: Chris Bazar, Planning Director; Jana Beatty, Senior Planner; Rodrigo Orduña, Senior Planner; Allen Lang, Building Official; Ray MacKay, County Counsel's Office; Nilma Singh, Recording Secretary.

There were approximately forty-one people in the audience.

CALL TO ORDER: The Chair called the meeting to order at 6:00 p.m.

ANNOUNCEMENTS BY THE CHAIR: None

OPEN FORUM: Open forum is provided for any members of the public wishing to speak on an item not listed on the agenda. Each speaker is limited to three (3) minutes. No one requested to be heard under open forum.

CONSENT CALENDAR:

1. **APPROVAL OF COMMISSION MINUTES ~ December 17, 2007.**
Commissioner Jacob made corrections on page 5, last paragraph and the Chair made a correction on the motion for TR-7871 (page 7).

2. **TENTATIVE PARCEL MAP, PM-9408 ~ PALOMARES CATTLE COMPANY ~** Petition to allow subdivision of a site into six lots, in an "A" (Agricultural) District, located at 31253 Palomares Road, east side, approximately 3.7 miles south of Palo Verde Road, Castro Valley area of unincorporated Alameda County, bearing Assessor's Parcel Number: 085A-3701-008-00. (Continued from June 18, September 17, November 5 and December 3, 2007; to be continued to March 3, 2008). **Staff Planner: Phil Sawrey-Kubicek.**

Commissioner Jacob made the motion to approve the Consent Calendar including the amended Minutes and Commissioner Loisel seconded. Motion carried 6/0.

Commissioner Imhof arrived a few minutes late.

REGULAR CALENDAR:

1. **TENTATIVE TRACT MAP, TR-7928 – GOMEZ and JIMENEZ ~** Petition to allow conversion of seven apartments into seven residential condominiums, in a R-S-D-35 (Suburban Residence, 5,000 square feet Minimum Building Site Area/3,500 square foot Building Site Area per Dwelling Unit) District, located at 235-259 Grove Way, southeast side, approximately 350 feet southwest of Haviland Avenue, Cherryland area of unincorporated Alameda County, bearing Assessor's Parcel Number: 429-0028-052-00. **Staff Planner: Howard Lee**

Mr. Orduña presented the staff report.

Public testimony was called for. Rafael Jimenez, co-applicant, concurred with all the recommended conditions. The Chair announced that the Commission had viewed the site during the Field Trip and noted the gate and fence location relative to vehicle queuing, and location of curb/gutter improvement requirements. Mr. Jimenez pointed out that, when completed, only his property will have curb and gutter improvements and further expressed concern that all the water from the neighboring properties will come onto his

property due to the lower elevation needed for curb and gutter installation. He also thought that a stormwater piping plan for the entire area would be more appropriate.

Everet Moretti, project engineer, also expressed similar concerns, adding that these improvements will further lower the front grade. He hoped to work with Public Works for a reasonable and practical solution and perhaps a deferred payment arrangement. The Chair asked if there was a mechanism to further this discussion. Staff explained 'bonding' where developers are required to set aside money for improvements in the future. The Chair recommended amending the condition to allow for bonding and, in response to Commissioner Rhodes, stated that he would prefer to keep the fence relocation and curb/gutter improvement as separate conditions.

Mr. Jimenez reiterated his agreement to comply with the fence/gate relocation requirement but asked for the possibility of moving the entry gate less than 20 feet. Commissioner Carbone said he supported a 20-foot setback.

Public testimony was closed. Although the staff report and the Condo Guidelines portion was done very well, Commissioner Jacob expressed concern with the condition of approval that the applicant shall submit homeowners' association report summaries instead of allowing the Planning Commission to review these summaries prior to a decision on the project. The intent of the Guidelines was to have the report summaries completed prior to any action by this Commission, especially the building and fire guidelines. The Chair agreed. *Commissioner Ready made the motion to approve the application as recommended and Commissioner Imhof seconded. Motion carried unanimously.*

2. **OUTDOOR MOBILE BUSINESSES** ~ The Planning Commission will consider proposed modifications to the Alameda County Zoning Ordinance to include Mobile Outdoor Businesses, including allowing them as Conditional Uses in the Office Commercial (C-O), certain industrial (M-1 and M-2), and highway frontage (H-1) Zoning Districts, and set siting and performance criteria for them. **Staff Planner: Rodrigo Orduña**

Mr. Orduña presented the staff report noting the receipt of a letter from the Law offices of Eric Nishizawa dated January 22, 2008. Commissioner Jacob noted that the language does not include existing temporary businesses. Staff explained that these uses (less than 20 minutes) should be encouraged instead to locate in industrial areas where they are needed, perhaps more permanently to provide better regulations.

No public testimony was submitted. A discussion ensued regarding whether this modification is to add a new type of mobile outdoor businesses or to make existing uses legitimate; whether a mobile business should have a relationship to the existing main use; whether to focus on food vendors exclusively or to specifically include all types of mobile uses; proposed Section 17.52.1100 regarding separation from other businesses; location of mobile businesses on an empty lot; issuance of permits vs. banning mobile businesses altogether; and the difference between Highway Frontage and Highway

Commercial Frontage. Mr. Bazar suggested deleting the second sentence of the siting criteria under proposed section 17.52.1100.A.2 and Commissioner Imhof suggested deleting the second sentence under Attachment A, Definition 17.04.010. The Chair recommended either continuing the matter or modifying the definition of food vendors and to consider other uses as they came up.

Commissioner Jacob made the motion to modify the second sentence under Attachment A, 17.04.010 Definition to read: "It is limited to food trucks that directly serve...." (deleting the words "and other mobile businesses") and deleting the second sentence under 17.52.1100.2.A. Commissioner Imhof seconded and the motion carried unanimously.

3. **ALTAMONT MOTORSPORTS PARK** ~ Revocation hearing for C-5720 pursuant to Section 17.54.030 of the Zoning Ordinance, Altamont Motorsports Park, located at 17001 Midway Road, east side, approximately 2,200 feet south of Highway I-580, unincorporated Midway area, Assessor's Parcel Number: 099B-7675-005-07. **Staff Planner: Jana Beatty**

Ms. Beatty presented the staff report. Mr. Bazar added that the Administrative Draft EIR is tentatively scheduled for mid/late February and the public EIR in March, and the DEIR/FEIR public review process will not be concluded before the new racing season. County Counsel also concurs with staff's recommendation. In response to the Commission, Mr. Bazar explained the reasons for the rezoning recommendation and regarding the number of days in delayed payment, he indicated that although not crucial, it did contribute towards the delay and Ms. Beatty further explained the consultant's process.

Public testimony was called for. Kristen Castaños, Counsel for the raceway, stated that the rezoning application was recommended by Planning staff. They concur with staff recommendations and share the same concerns. They have also been actively engaged in discussions with the neighbors although an agreement has not been reached. The schedule distributed during the Commission Field Trip reflects minimum operation which allows them to remain viable. The public service operations depend on revenue producing activities to maintain the tracks and the teen driving program is provided only in the week-ends. Regarding the delay in payment, Ms. Castaños explained that there was a delay of two days between the deadline and the payment receipt date which should not have significantly delayed the release of the Administrative DEIR. In response to the Chair's question on the 24-hour event in May, she further explained there is no 24-hour event scheduled but an event named "24 Hour Lemons"; and all week-end and Sunday activities end at 6 pm and Saturday at 9 pm which is significantly reduced from what is allowed under the previous CUP. The youth events are being offered now, during the off-season. Steve Nassar added that the start times is 9 am on both days, prior permit allows events seven days a week and historically, spectator events held on Saturdays and Sundays, and testing events on Friday and some other weekdays based on the demand. To be a NASCAR sanctioned track, one is required to have a certain number of racing days. In response to Commissioner Imhof, he explained that the decision for the rezoning was

made in September/October, 2006 and Ms. Castaños added that an application was submitted in March 2007 and staff is directing the preparation of the EIR.

In response to Commissioner Ready, Mr. Bazar replied that discussions are on-going with County Counsel regarding Measure D implications. No other agricultural property has been rezoned to-date.

Mark Cohen, Attorney representing Community for Better Altamont and Mark and Karin Rivard, read the press release dated February 21, 2006. He felt that the completion of the EIR was taking too long. Although the Applicants became aware in May 2006 that tracks were not allowed in the Agricultural District, the rezoning application was not filed until September/October, 2006. He felt that the use should cease until the rezoning application is acted on. Justification for revocation finding is justified as there are numerous violations and health/safety concerns. The use needs to be relocated. He agreed with staff recommendation for limited public service.

Norman Phillips, 16950 Midway Road, said he lives across the street and ran the races from 1995 to 2001. Twenty-seven events were held annually which increased to 100 with the change in ownership. The use is in violation of previous permit conditions # 3a, b and d; 4a and b; 12; 15; 19; 23 and 30. NASCAR's requirement is 18 events.

Derek Watry, Associate Principal, Wilson, Ihrig & Associates, Acoustical Engineers in Oakland, said he has measured the noise level on the Rivard's property against the County Noise Ordinance. A maximum noise level of 70dba is allowed on any property line and the Rivard property, during both 2006 and 2007 racing season, had a noise level of 99dba. Measurements were taken from both the property line and closer to the dwelling which had a level of 80+dba. Commissioner Carbone asked for the dba level for a non-racing day and Commissioner Ready asked for the windmill noise level as they are closer to the Rivards property than the racetrack. Mr. Watry replied that on a non-racing day, it is between 45-56dba and he has not measured the noise level of the windmills. Mr. Bazar added that there are generalized data but not site specific levels. Mr. Waltry, upon checking his notes, stated that the ambience noise level, during a non-racing week between 7am-10pm, is 45-56dba noting that the windmills are low radio velocity rotation wheels.

Mary Estorga, 16903 Midway Road, submitted her written comments. She would like the raceway to go away as it is too loud.

Amir Talai, an electrical contractor speaking on behalf of Community for Better Altamont, stated that an inspection during a race event on Friday, October 12th, 2007, revealed that an excessive amount of lighting was shining on the neighboring properties from the 90 feet high poles. The distance from area of measurement on the Rivard property to these poles is approximately 1,700 feet, about ¼ mile. Mr. Talai asked why so much lighting is necessary noting that it is in violation of several County guidelines, specifically A-E. He urged the completion of the EIR to determine if the lights are structurally adequate and to reduce the lights.

The Chair asked when these lights (poles) were installed/constructed. The owner had indicated during the Commission Field Trip that the poles were constructed two years ago by the previous owners and they have found permitting paperwork. Mr. Allen Lang, Building Official, confirmed that 1996 permit did not include the 90-foot poles.

Jim Tanner said he was speaking for Community for A Better Altamont and himself. His property, 16866 N. Midway Road, is located between I-580 and the tracks; urged approval of staff's recommendation; and the track is disruptive to their life style. Although the facility was in existence when he bought his property, the events were limited. His concerns included safety, speed, number and size of the vehicles, health and noise. Ms. Tanner felt that much time has been spent without a solution with the neighbors taking time off to attend related meetings. An EIR is much needed to resolve these many issues.

James McNeely said he has lived at 499 Midway Road for seven years. He was also speaking for Community for A Better Altamont and urged support of staff recommendation. Racing disrupts his life as he cannot hear or hold conversations, watch TV without closing all windows, even during summer. Noise is another issue. He felt that it was time to limit the operation, complete the EIR and enforce the process.

Jim Butler said he is a 30-year resident of this area at 444 N. Midway Road. He agreed with Mr. McNeely that racing disrupts lives with speeding and noise as the main problems.

The Chair announced a short break. The meeting reconvened at 8:15 p.m.

Karin Rivard stated that she had bought her property, 17011 Midway Road, nine years ago and is located directly south of the facility. The facility has been operating under an expired permit with repeated violations and has increased activities by 600% from the original use. She urged for a revocation and agreed that it disrupts life as medical reports prove that the noise levels are health damaging. There is no buffer zone. She disagreed that the applicants have tried to reach out to the community to resolve issues. There has been only one meeting after their initial purchase in 2006. Ms. Rivard urged the Commission to limit the operation to weekday-public uses which comply with the Noise Ordinance. In response to Commissioner Ready, she noted that there are no noise issues regarding the 30 windmills on the south of her property.

Joel Smith urged revocation based on the following five reasons: there is no value to Alameda County since most of the users are from out-of-town and not successful enough to provide tax revenues; a nuisance with noise, traffic, pollution, litter, exhaust fumes and light; environmental impact and operating without a permit for two years; and neighbors/residents rights/harms out-weigh any benefits.

Philip Hunsucker, Community for a Better Altamont, discussed the Noise Ordinance and submitted a related letter. This Ordinance was already in effect when the facility was

permitted in 2006. Noise violations have been noted by all including the County, Environmental Health and the Consultants. This is an expanded use.

Commissioner Loisel asked when the Noise Ordinance was approved. Mr. Bazar replied 1960 with various modifications thereafter.

Ace Bowman said he lives in Merced County, 3919 Quail Avenue, described a similar situation in his County adding that finances are also identical. Merced County had shut down all EIR work due to non-payment.

Rob Gould, 16903 Midway Road, requested verification on light permits and pointed out that the lights were installed by the applicants. He agreed that that there had been only one neighborhood meeting and with revocation; requested clarification on the revocation process; and suggested that any new violation should result in a revocation.

Roberto Valencio, property owner at 16777 Midway Road, pointed out that this issue has been going on for two years and pointed out that there is a solution. Sarah Valencio, also representing Community for a Better Altamont, urged limiting the operations to weekday public services only until the Planning review and environmental study are completed. There are health, safety, noise and traffic concerns.

Victoria Corona, 16965 Midway Road and on behalf of Community for a Better Altamont, stated that she has lived in this area for thirty years and urged support of staff recommendation. The racing disrupts life at home with no relaxation, especially in the week-ends, damage our roads, no traffic or speed control. There is a need for a reasonable solution.

Jaime McNeely, property owner at 499 Midway Road and on behalf of the Community for a Better Altamont, stated that her property is about ½ mile from the tracks. She submitted photographs of traffic, 'shut-down' road during a racing event, and broken down race rigs and drifters' cars blocking her driveway. She urged approval of staff recommendation. The road, which is narrow and without sidewalks, walkways, shoulders or lights, is packed with cars during racing events and used for repairs. There is a need for road, traffic, noise, parking and other studies to find a solution for the location and type of use. The applicants have had two years to complete their application process and have no incentive to finish. Meanwhile, they are continuing to operate under an expired permit. Ms. McNeely confirmed that neither she nor her family have ever been contacted by the applicants to discuss any issues/concerns.

Jon Harvey, a member of the East County Board of Zoning Adjustments and as a member of the public, stated that although he does not live in the neighborhood, his history with this issue could provide some continuity. He felt that staff's recommendation is the only reasonable solution. Regarding the noise issue, 100dba is extremely loud and the fairly narrow-band whining sound from the windmills comes from the turbines.

Mark Rivard pointed out that much has changed since the 1996 original permit and urged revocation. He felt that it was time to cease, re-evaluate and consider the use to fit the present conditions. In opposition, Mr. Rivard added the following: the facility has tried to drive him off his property with excessive noise levels that are inhuman for duration of 27 hours during the weekends; misleading information on websites; threats have been received which is followed by low offers for his property; some neighbors have not attended these hearings because they are afraid of similar retaliations; the public service has had a turn-out of three youths only; noted the non-requirement of certain mufflers; and noted photographs have been submitted of the heavy equipment on site which had been used for four weeks. He felt that the applicants are buying time to establish the baseline for the EIR.

Ms. Castaños, in rebuttal, clarified that the recovered permits are for the light poles in the parking lot and permit application for those in the track area have been submitted to the Building Department and added the following: all records relating to the previous owners have been submitted to the Planning Department noting that number of race days nor the events have increased; the Merced County facility does not have the same owner but a different entity; and they have no control over the delay. She, personally, has had settlements discussions with Mr. Cohen facilitated by Mr. Washington, County Counsel.

Mr. Lang, Building Official, also clarified that an incomplete application was submitted on September 12, 2007 which was returned with comments on October 2, 2007. Ms. Castaños, in rebuttal, stated that they have re-submitted a complete application in December.

Mr. Cohen, in rebuttal, pointed out that although there were discussions, the Applicants had been unwilling to come to any reasonable conclusion. Since there have been numerous violations and a racetrack is not allowed in the Agricultural District, this permit should be revoked or modified to only public service week-day events, which will also allow the rezoning application to proceed at a faster pace.

Public testimony was closed. Commissioner Ready concurred with staff recommendation to revoke the permit adding that the Applicants have not complied with the 1996 permit. She read the prior conditions relating to lighting, traffic and noise (dba levels and monitoring devices) conditions adding that she had noted during the field trip today that lights are directed in every direction. Any other discussion should be continued upon the completion of the EIR.

Commissioner Carbone asked for the EIR completion date. Mr. Bazar replied that as reflected in the staff report, it should be completed by March/April. Commissioner Carbone pointed out that although there is value to this facility which has been in existence before the arrival of the neighbors, many conditions are in violation and at the neighbors' expense. Mr. Bazar pointed out that staff was not recommending a formal revocation but significantly limited activities until the completion of the EIR. The Chair stated that he would like discussions, if allowing a continuance, on conditions related to

lighting---non-permitted lighting not be used; noise---events be within the limited noise standards; and noise equipment along the property lines.

Commissioner Jacob noted that all agree on the EIR process although it has been determined that the use is exempt from CEQA. He felt that it is unfair to hold an incentive to control a timeline. The EIR should be used to make physical and use changes. He suggested discussions on the number of events (27 in 2001), racing in day-light hours eliminating the use of lighting and enforcing the basic conditions, specifically the noise level.

Commissioner Rhodes noted that there are other similar existing facilities with neighbors and the testimony on the non-requirement of certain types of mufflers. Staff replied that this could be looked into and the Chair added that the Commission could suggest such requirement but not mandate. Commissioner Imhof asked Ms. Henninger, Code Enforcement Manger, if cars without mufflers are allowed to race and if the lights are facing in all directions. He felt that there is a need for a set of requirements to be completed before any further activities, specially fencing and/or landscaping. Ms. Henninger replied that she was not aware that cars without any mufflers are allowed to race, there are bright, tall, high lights everywhere and confirmed that fencing exists but not solid fencing as required in certain places. She recommended specific conditions regarding lighting, RV parking and no events after dark. The Chair recommended that these non-permitted lights not be used until the issue is resolved and there is a need for the number of events.

A discussion ensued regarding staff recommendation: a reduced schedule; non-permitted 90-foot light poles not be used; RV parking; revocation of the permit while the EIR is in the process and the prior conditions of approval. The Commission agreed that the facility be allowed to hold week-day public service activities, restrict events to day-light hours, till 6:00 pm; addition of prior conditions 12, deleting the words "...north and west sides of the track oval" and 13 and RV parking considered on case by case basis. Commissioner Loisel, noting that since the EIR is in the process, made the motion to move staff recommendation and Commissioner Imhof seconded. A discussion followed regarding the motion which includes approval of limited operation of week-day public services only. Commissioner Loisel withdrew her motion. A discussion continued regarding the number of event days.

Commissioner Jacob made the motion to adopt staff recommendation with the following modifications: to include week-day and week-end public service activities only during day-light hours; no lights; install and monitor decibel readers to maintain, specifically 12 and 13, around the entire oval; no RV parking overnight; to fully enforce the existing terms of the Conditional Use Permit; and the number of event days necessary for NASCAR certification, not to exceed 27. The Chair seconded the motion with a modification that no over-night parking be allowed and Commissioner Carbone expressed concern with the number of event days. Commissioner Rhodes recommended no more than 4-event days in thirty-days. The motion was modified to reflect that the number of event days necessary for NASCAR certification, not to exceed 28 race event

days, no more than 4-event days in any thirty-day period. At the request of staff, discussion ensued regarding the inclusion of public service activities in the motion. The motion was clarified that the 28-day limit will include all racing and public service activities. Motion carried 6/1 with Commissioner Imhof dissenting.

STAFF COMMENTS & CORRESPONDENCE: *None*

CHAIRS REPORT: The Chair welcomed Commissioner Rhodes.

COMMISSION ANNOUNCEMENT, COMMENTS AND REPORTS: Commissioner Jacob announced that he will be working with staff to set up a green bldg committee.

ADJOURNMENT: There being no further business, Commissioner Imhof moved to adjourn the meeting at 10:00 p.m. Commissioner Loisel seconded the motion. The motion was carried 7/0.

CHRIS BAZAR, SECRETARY
COUNTY PLANNING COMMISSION OF ALAMEDA COUNTY